

HOUSE No. 5001

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 30, 2010.

The committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendments (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2530; and inserting before the enacting clause the following emergency preamble:

“*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to establish and regulate forthwith gaming in the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”) of the House Bill establishing expanded gaming in the Commonwealth (House, No. 4619, amended), reports (on the residue) recommending passage of the accompanying bill (House, No. 5001).

For the committee,

On the part of the House:

BRIAN S. DEMPSEY

KATHI-ANNE REINSTEIN

PAUL K. FROST

On the part of the Senate:

STANLEY C. ROSENBERG

STEVEN C. PANAGIOTAKOS

RICHARD J. ROSS

The committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendments (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2530, and inserting before the enacting clause an emergency preamble) of the House Bill establishing expanded gaming (House, No. 4619, amended), reports (on the residue) recommending passage of the accompanying bill (House, No. 5001). July 30, 2010.

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

An Act establishing expanded gaming in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law rule or regulation to the contrary the Massachusetts gaming commission shall have the power to:-

(1) levy and collect assessments, fees and fines and impose penalties and sanctions for the violation

of this chapter and the regulations promulgated hereunder;

(2) collect taxes pursuant to this chapter;

SECTION 2. Notwithstanding any general or special law rule or regulation to the contrary:-

(a) In addition to any other tax or fee imposed by the Massachusetts gaming commission, there shall be imposed an annual license fee of \$600 for each machine approved by the commission for use by a gaming licensee at a gaming establishment; provided, however, that, no sooner than 5 years after award of original license the commission may annually adjust the fee for inflation. The fee shall be imposed as of

July 1 of each year for all approved slot machines on that date and shall be assessed on a pro rata basis for any slot machine approved for use thereafter during the year.

(b) The commission shall, by regulation, establish fees for any investigation into a violation of this chapter or regulation promulgated thereunder by a gaming licensee to be paid by the licensee, including, but not limited to, billable hours by commission staff involved in the investigation and the costs of services, equipment or other expenses that are incurred by the commission during the investigation.

(c) Any remaining costs of the commission necessary to maintain regulatory control over gaming establishments that are not covered by: (i) the fees set forth in subsections (a) and (b), (ii) any other fees assessed pursuant to this chapter or (ii) any other designated source of funding shall be assessed annually on gaming licensees under this chapter in proportion to the number of gaming positions at each gaming facility. Each licensee shall pay the amount assessed against it within 30 days after the date of the notice of assessment from the commission.

(d) If the fees collected in subsections (a) and (b) exceed the cost required to maintain regulatory control, the surplus funds shall be credited in proportional shares against each gaming licensee's next assessment.

(e) In addition to the fees collected under this section and any additional costs of the commission, the commission shall assess an annual fee of not less than \$5,000,000 in proportional shares against each gaming licensee in proportion to the number of gaming positions at each gaming facility for the costs of service and public health programs dedicated to addressing problems associated with compulsive gambling. Such assessed fees shall be deposited into the Public Health Trust Fund established pursuant to section 9.

(f) All fees and assessments collected under this section, except those collected pursuant to subsection (e), shall be deposited into the Gaming Control Fund established pursuant to section .

SECTION 3. Notwithstanding any general or special law rule or regulation to the contrary:-

(a) There shall be established and set up on the books of the commonwealth a separate fund to be known as the Massachusetts Gaming Control Fund, hereinafter in this section referred to as the fund. The commission shall be the trustee of the fund expend monies to finance operational activities of the commission. The fund shall be credited any appropriations, bond proceeds or other monies authorized by the general court and specifically designated to be credited thereto, the proceeds of the assessments levied pursuant to section 7, application fees for licenses issued under this chapter and such additional funds as are subject to the direction and control of the commission. All available monies in the fund that are unexpended at the end of each fiscal year shall not revert to the General Fund and shall be available for expenditure in the subsequent fiscal year. Any funds unexpended in any fiscal year for the purposes of which such assessments were made shall be credited against the assessment to be made in the following fiscal year and the assessment in the following fiscal year shall be reduced by any such unexpended amount. The commission shall record all expenditures made by subsidiary on the Massachusetts management and accounting reporting system, so-called according to regulations established by the state comptroller.

(b) The commission shall, for the purposes of compliance with state finance law, operate as a state agency as defined in section 1 of chapter 29 and shall be subject to the provisions applicable to agencies under the control of the governor including, but not limited to, chapter 7A, chapter 7, chapter 10 and chapter 29; provided, however, that the comptroller may identify any additional instructions or actions necessary for the commission to manage fiscal operations in the state accounting system and meet statewide and other governmental accounting and audit standards. Unless otherwise exempted by law or the applicable central service agency, the commission shall participate in any other available commonwealth central services including, but not limited, to the state payroll system pursuant to section 31 of chapter 29, and may purchase other goods and services provided by state agencies in accordance with comptroller provisions. The comptroller may chargeback the commission for the transition and

ongoing costs for participation in the state accounting and payroll systems and may retain and expend such costs without further appropriation for the purposes of this section. The commission shall be subject to section 5D of chapter 29 and subsection (f) of section 6B of chapter 29.

The commission shall annually submit a finance plan to the secretary of administration and finance, the chairs of the house and senate committees on ways and means and the chairs of the joint committee on economic development and emerging technologies.

SECTION 4. Notwithstanding any general or special law rule or regulation to the contrary:-

There is hereby established and placed on the books of the commonwealth a separate fund to be known as the Public Health Trust Fund. The public health trust fund shall consist of fees assessed pursuant to section 7 and all other monies credited or transferred to said fund from any other source pursuant to law.

The secretary of health and human services shall be the trustee of the public health trust fund and shall expend monies in the fund, without further appropriation, to assist social service and public health programs dedicated to addressing problems associated with compulsive gambling, including, but not limited to, gambling prevention and addiction services, educational campaigns to mitigate the potential addictive nature of gambling and any studies and evaluations necessary to ensure the proper and most effective strategies.

SECTION 5. Notwithstanding any general or special law rule or regulation to the contrary:-

All applicants for a gaming license shall pay to the commission a non-refundable application fee of \$350,000, to defray the costs associated with the processing of the application and investigation of the applicant, provided further, that if the costs of the investigation exceed the initial application fee, the applicant shall pay the additional amount to the commission within 30 days or the application shall be rejected.

SECTION 6. Notwithstanding any general or special law rule or regulation to the contrary:-

Applicants for a category 1 license shall invest not less than \$600,000,000 into the gaming establishment which shall include the gaming area, at least 1 hotel, and other amenities as proposed in the application

for a category 1 license. Upon award of a gaming license by the commission, the applicant shall be required to deposit 10 per cent of the total investment proposed in the application into an interest-bearing account. Monies received from the applicant shall be held in escrow until the final stage of construction, as approved by the commission, at which time the deposit shall be returned to the applicant to be applied for such final stage. Should the applicant be unable to complete the gaming establishment, the deposit shall be forfeited to the commonwealth. In place of a cash deposit, the commission may allow for an applicant to secure a deposit bond insuring that 10 per cent of the proposed capital investment shall be forfeited to the commonwealth.

(b) Any licensee who fails to begin gaming operations within 1 year after the date specified in its application timeline, as approved by the commission, shall be subject to suspension or revocation of said license by the commission, and may, after being found by the commission subsequent to a hearing to have acted in bad faith in its application, be assessed a fine, collectible by the commission, of up to \$50,000,000.

(c) Applicants for a category 1 license shall submit their proposed capital investment with their application to the commission which shall include stages of construction of the category 1 establishment and the deadline by which construction and any infrastructure improvements will be completed. In awarding a category 1 license, the commission shall determine at what stage of construction a licensee shall be approved to open for business; provided, however, that a licensee shall not be permitted to open for business until the commission has determined that at least the gaming area and hotel have been built and are of a superior quality as set forth in the conditions of licensure; provided, further, that total infrastructure improvements onsite and around the vicinity of the gaming establishment, including projects to account for traffic mitigation, shall be completed before the gaming establishment shall be approved for opening by the commission.

(d) A category 1 licensee shall pay to the commission a fee of \$85,000,000 within 30 days of the final award of the license which sets forth the conditions to be satisfied by the licensee before the gaming establishment may be opened to the public. The commission shall set any renewal fee for such license based on the cost of fees associated with the evaluation of a category 1 licensee under this chapter, and such renewal fee will be exclusive of any subsequent license fees under this section.(d) The commission shall determine the sources and total amount of an applicant's proposed capitalization to develop, construct, maintain and operate a proposed gaming establishment under this chapter. Upon award of a gaming license, the commission shall continue to assess the capitalization of a licensee for the duration of construction of the proposed gaming establishment and the term of the license.

(e) Applicants for a category 2 license who are permitted by the commission to operate 1000 slot machines shall invest not less than \$100,000,000 into the gaming establishment and racecourse, if applicable. Applicants for a category 2 license who are permitted by the commission to operate 1250 slot machines shall invest not less than \$125,000,000 into the gaming establishment and racecourse, if applicable. The investment required under this section shall be made within 2 years of receiving a gaming license; provided, however, that any infrastructure improvements necessary to increase visitor capacity and account for traffic mitigation, as determined by the commission, shall be completed before the category 2 licensee shall be authorized to operate any slot machine at the gaming establishment.

(f) The required licensing fee for a category 2 license shall be not less than \$20,000,000 for 1000 slot machines or \$25,000,000 for 1250 slot machines.

(g) Upon award of a gaming license, the commission shall continue to assess the capitalization of a licensee for the duration of construction of the proposed gaming establishment and the term of the license.

SECTION 7. Notwithstanding any general or special law rule or regulation to the contrary:-

A category 2 license issued by the Massachusetts gaming commission shall be for a period of 5 years.

The commission shall establish procedures for renewal and set the renewal fee based on the cost of fees

associated with the evaluation of a licensee; provided, however, that the cost of renewal shall not be less than \$100,000.

SECTION 8. Notwithstanding and general or special law rule or regulation to the contrary:-

A gaming licensee under chapter 23K shall pay daily to the commission the gross gaming revenue payment.

SECTION 9. Notwithstanding and general or special law rule or regulation to the contrary:-

No person including, but not limited to, a substantial party in interest, affiliates and those entities established under the rules and regulations of the state secretary, shall transfer a license, a direct or indirect real interest, structure, real property, premises, facility, personal interest or pecuniary interest under a license issued under this chapter or enter into an option contract, management contract or other agreement or contract providing for such transfer in the present or future, without the notification to, and approval by, the Massachusetts gaming commission under chapter 23K. The commission may promulgate rules and regulations, under section 5, that create exemptions from the approval requirement; provided, that:

(i) in no event shall a bona fide commercial financial institution licensed by the division of banks which becomes a substantial party of interest with a licensee be considered a transferee;

(ii) the commission may require the transferor, transferee, or both, to pay to the board an amount representing the commonwealth's share of the increased value for the transferred licenses, property or interest; provided, further, that the commission shall consider as a factor in determining the amount of the payment the market value of said license, property or interest when it was acquired and at the time of the transfer; provided, further, that the commission may place additional conditions or restrictions on said transfer that the commission considers suitable; provided, further, that the commission may reject said transfer if the commission considers the transfer unsuitable; and

(iii) any payments collected by the board on behalf of the commonwealth based on said transfer shall be deposited in the same manner as license fees are deposited.

SECTION 10. Notwithstanding and general or special law rule or regulation to the contrary:-

The Massachusetts gaming commission shall establish fees for a key gaming employee and a gaming employee license which shall include costs incurred for conducting a background investigation into an applicant for said license. The commission shall establish the term of a key gaming employee and a gaming employee license. It shall be the responsibility of any gaming employee to ensure that their license is current.

SECTION 11. Notwithstanding and general or special law rule or regulation to the contrary:-

The Massachusetts gaming commission shall establish fees for gaming vendor licenses and non-gaming vendor registrations which shall include costs incurred for conducting a background investigation into an applicant for said license.

SECTION 12. Notwithstanding and general or special law rule or regulation to the contrary:-

The fee for a gaming beverage license permitted under chapter 23K and any renewals of the license shall be determined by the Massachusetts gaming commission. The application fee shall be remitted with the gaming application fee.

A gaming licensee shall be responsible for violations of gaming beverage license in the gaming establishment. The commission may revoke, suspend, refuse to renew or refuse to transfer a gaming beverage license for violations of chapter 138, regulations promulgated by the alcoholic beverages control commission and the regulations adopted by the commission. If, at any time, a licensee elects temporary suspension of their gaming license due to violations of this section, said licensee shall owe the commonwealth the average tax on gross gaming revenue based on an appropriate period of time as determined by the commission for the number of days operation was suspended.

SECTION 13. Notwithstanding and general or special law rule or regulation to the contrary:-

Upon award of a new gaming license under chapter 23K, the new gaming licensee shall pay the original licensing fee.

SECTION 14. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) The bureau of investigations and enforcement under the Massachusetts gaming commission shall have the authority to issue orders requiring persons to cease any activity which violates this chapter, a regulation adopted hereunder, or any law related to gaming in the commonwealth. The bureau may, in its order, require compliance with such terms and conditions as are reasonably necessary to effectuate the purposes of this chapter.

(b) If the bureau finds, that a person is not in compliance with any order issued pursuant to this section, it shall assess a civil administrative penalty on such person as provided in said section 35 and the regulations adopted thereunder. The penalty may be assessed whether or not the violation was willful. In determining the amount of the civil penalty, the bureau shall consider: (i) the nature of the violation; (ii) the length of time the violation occurred; (iii) the risk to the public and to the integrity of gaming operations created by the conduct of the person; (iv) the seriousness of the conduct of the person; (v) any justification or excuse for such conduct by the person; (vi) the prior history of the particular person involved with respect to gaming activity; (vii) any corrective action taken by the person to prevent future misconduct; (viii) and other relevant factors.

(c) In addition to collecting any civil penalties recoverable under this chapter or any other general or special law, the bureau may bring an action in the superior court to restrain, prevent or enjoin any conduct prohibited by this chapter or to compel action to comply immediately and fully with any order issued by the bureau. Except in cases of emergency where, in the opinion of the court, immediate abatement of the unlawful conduct is required to protect the public interest, the court may in its decree fix a reasonable time during which the person responsible for the unlawful conduct may abate and correct the violation. The expense of the proceeding shall be recoverable from the subject of the proceeding.

(d) Upon a recommendation from the bureau, the commission shall issue orders to condition, suspend or revoke a license or permit issued under this chapter.

(e) the bureau shall issue an order to cease and desist any activity if the bureau finds that a licensee has engaged in or is about to engage in an act or practice which constitutes a violation of this chapter or laws of the commonwealth and may take such affirmative action to effectuate the order. If the bureau finds that the licensee is engaged in an act or practice that would cause irreparable harm to the security and integrity of the gaming establishment or the interests of the commonwealth in ensuring the security and integrity of gaming under this chapter, the bureau may issue a temporary suspension of the license.

(f) Any licensee who has been issued a temporary order of suspension by the bureau shall be entitled to a hearing before the commission on such suspension within 7 days that the order was issued. At the conclusion of the hearing, the commission may issue a final order to condition, suspend or revoke the license in question.

(g) Any licensee shall have the right to an adjudicatory hearing on an order issued by the bureau pursuant to chapter 30A.

SECTION 15. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) The bureau may assess a civil administrative penalty on a licensee or registrant who fails to comply with any provision of this chapter or any regulation or order adopted by the commission; provided, however, that such noncompliance occurred after the bureau had given such person written notice of such noncompliance and the time stated in said notice for coming into compliance had elapsed; provided, however, that the bureau may assess such penalty without providing such written notice if such failure to comply: (i) was part of a pattern of noncompliance and not an isolated instance; (ii) was willful or neglectful and not the result of error; (iii) resulted in a significant breach to the integrity of the gaming establishment or gaming laws of the commonwealth; and (iv) consisted of failure to promptly report to the

board any knowledge of evidence or circumstances that would cause a reasonable person to believe that a violation of this chapter had been committed. The civil administrative penalty shall be in addition to any other civil penalty that may be prescribed by law.

(b) For the purpose of determining whether such noncompliance was part of a pattern of noncompliance and not an isolated instance, the bureau shall consider without limitation the following: (i) whether the bureau had previously notified the person of such noncompliance on more than one occasion during the previous month or of any noncompliance with the same provision of a law, regulation, order, license or approval as the current noncompliance during the previous 6 month period; or (ii) whether the current and previous noncompliances, considered together, indicate a potential threat to the integrity of the gaming establishment and gaming in the commonwealth or an interference with the commission's ability to efficiently and effectively regulate gaming in the commonwealth and enforce any regulation, license or order. If a licensee or registrant who has received a notice of noncompliance fails to come into compliance within the time period stated in such notice, the civil administrative penalty may be assessed by the bureau upon such licensee or registrant from the date of receipt of such notice.

(c) Whenever the bureau seeks to assess a civil administrative penalty on any licensee or registrant, the bureau shall cause to be served upon such licensee or registrant, either by service, in hand, or by certified mail, return receipt requested, a written notice of its intent to assess a civil administrative penalty which shall include a concise statement of the alleged act or omission for which such civil administrative penalty is sought to be assessed, each law, regulation, order, license or approval which has not been complied with as a result of such alleged act or omission, the amount which the bureau seeks to assess as a civil administrative penalty for each such alleged act or omission, a statement of such licensee's or registrant's right to an adjudicatory hearing on the proposed assessment, the requirements such licensee or registrant must comply with to avoid being deemed to have waived the right to an adjudicatory hearing and the manner of payment thereof if such person elects to pay the penalty and waive an adjudicatory hearing. After written notice of noncompliance or intent to assess a civil administrative penalty has been

given, each such day thereafter during which such noncompliance occurs or continues shall constitute a separate offense and shall be subject to a separate civil administrative penalty if reasonable efforts have not been made to promptly come into compliance.

(d) Whenever the bureau seeks to assess a civil administrative penalty on any licensee or registrant, such licensee or registrant shall have the right to an adjudicatory hearing under chapter 30A whose provisions shall apply except when they are inconsistent with the provisions of this chapter.

(e) Such licensee or registrant shall be deemed to have waived such right to an adjudicatory hearing unless, within 21 days of the date of the bureau's notice that it seeks to assess a civil administrative penalty, such licensee or registrant files with the bureau a written statement denying the occurrence of any of the acts or omissions alleged by the bureau in such notice, or asserting that the money amount of the proposed civil administrative penalty is excessive. In any adjudicatory hearing authorized pursuant to chapter 30A, the bureau shall, by a preponderance of the evidence, prove the occurrence of each act or omission alleged by the bureau.

(f) If a licensee or registrant waives his right to an adjudicatory hearing, the proposed civil administrative penalty shall be final immediately upon such waiver. If a civil administrative penalty is assessed at the conclusion of an adjudicatory hearing, said civil administrative penalty shall be final upon the expiration of 30 days if no action for judicial review of such decision is commenced pursuant to chapter 30A.

(g) Any licensee or registrant who institutes proceedings for judicial review of the final assessment of a civil administrative penalty shall place the full amount of the final assessment in an interest-bearing escrow account in the custody of the clerk or magistrate of the reviewing court. The establishment of such an interest-bearing escrow account shall be a condition precedent to the jurisdiction of the reviewing court unless the party seeking judicial review demonstrates in a preliminary hearing held within 20 days of the

filing of the complaint either the presence of a substantial question for review by the court or an inability to pay. Upon such a demonstration, the court may grant an extension or waiver of the interest-bearing escrow account or may require, in lieu of such interest-bearing escrow account, the posting of a bond payable directly to the commonwealth in the amount of 125 per cent of the assessed penalty. If, after judicial review, in a case where the requirement for an escrow account has been waived, and in cases where a bond has been posted in lieu of such requirement, the court affirms, in whole or in part, the assessment of a civil administrative penalty the commission shall be paid the amount thereof together with interest at the rate set forth in section 6C of chapter 231. If, after such review in a case where an interest-bearing escrow account has been established, the court affirms the assessment of such penalty, in whole or in part, the commission shall be paid the amount thereof together with the accumulated interest thereon in such interest-bearing escrow account. If the court sets aside the assessment of a civil administrative penalty in a case where the amount of such penalty has been deposited in an interest-bearing escrow account, the licensee or registrant on whom the civil administrative penalty was assessed shall be repaid the amount so set aside, together with the accumulated interest thereon.

(h) Each licensee or registrant who fails to pay a civil administrative penalty on time, and each person who issues a bond pursuant to this section and who fails to pay to the commission on time the amount required hereunder, shall be liable to the commonwealth for up to 3 times the amount of the civil administrative penalty, together with costs, plus interest from the time the civil administrative penalty became final and attorneys' fees, including all costs and attorneys' fees incurred directly in the collection thereof. The rate of interest shall be the rate set forth in section 6C of chapter 231. The bureau shall be authorized to require that the amount of a civil administrative penalty imposed pursuant to this section exceed any economic benefit realized by a person for noncompliance.

SECTION 16. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) Whoever conducts or operates, or permits to be conducted or operated, any game or gaming device in violation of this chapter or the regulations adopted under this chapter shall be punished by imprisonment

in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 2½ years, or by a fine not to exceed \$25,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$100,000.

(b) Whoever employs, or continues to employ, an individual in a position, the duties of which require a license or registration under this chapter, who is not so licensed or registered, shall be punished by imprisonment in the house of correction for not more than 6 months, or by a fine not to exceed \$10,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$100,000.

(c) Whoever works or is employed in a position, the duties of which require licensing or registration under this chapter, without the required license or registration, shall be punished by imprisonment in the house of correction for not more than 6 months or a fine not to exceed \$10,000, or both.

(d) A gaming licensee who, without the permission of the commission: (i) places a game or gaming device into play or displays a game or gaming device in a gaming establishment; or (ii) receives, directly or indirectly, any compensation or reward or any percentage or share of the revenue for keeping, running or carrying on a game, or owning the real property upon, or the location within which any game occurs, shall be punished by imprisonment in the house of correction for not more than 2½ years or by a fine not to exceed \$25,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$100,000.

(e) Whoever conducts or operates any game or gaming device after the person's gaming license has expired and prior to the actual renewal of the gaming license shall be punished by imprisonment in the house of correction for not more than 1½ years or a fine not to exceed \$25,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$100,000.

(f) A gaming licensee who knowingly fails to exclude from the licensee's gaming establishment any person placed by the commission on the list of excluded persons shall be punished by a fine not to

exceed \$5,000 or by imprisonment in the house of correction for not more than 1 year, or both, and in the case of a person other than a natural person, by a fine not to exceed \$100,000.

(g) Whoever willfully:

(i) fails to report, pay or truthfully account for and pay over a license fee or tax imposed by this chapter or by the regulations adopted under this chapter; or

(ii) evades or defeats, or attempts to evade or defeat, a license fee or tax or payment of a license fee or tax shall be punished by imprisonment in the state prison for not more than 5 years or in the house of correction for not more than 2½ years or a fine not to exceed \$100,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$5,000,000.

SECTION 17. Notwithstanding and general or special law rule or regulation to the contrary:-

Whoever willfully resists, prevents, impedes, interferes with, or makes any false, fictitious or fraudulent statement or representation to the board, bureau, commission or division or to agents or employees of the board, bureau, commission or division in the lawful performance of the agent's or employee's duties under this chapter shall be punished by imprisonment in the state prison for not more than 5 years or in the house of correction for not more than 2½ years, or by a fine not to exceed \$25,000, or both.

SECTION 18. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) Whoever, during a game in a gaming establishment, knowingly and by any trick or sleight of hand performance or by a fraud or fraudulent scheme, cards, dice or other gaming device, for himself, for another or for a representative of either:

(i) wins, or attempts to win, money or property; or

(ii) reduces, or attempts to reduce, a losing wager in a gaming establishment shall be guilty of cheating and swindling.

(b) Whoever knowingly uses a cheating and swindling device or game in a gaming establishment shall be guilty of cheating and swindling.

(c) Whoever commits the offense of cheating and swindling shall be punished as follows:

(i) if the value of the money, property or wager cheated and swindled is \$75,000 or more, by imprisonment in the state prison for not more than 10 years or in the house of correction for not more than 2½ years or by a fine not to exceed \$1,000,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$10,000,000;

(ii) if the value of the money, property or wager cheated and swindled is \$10,000 or more but less than \$75,000, by imprisonment in the state prison for not more than 5 years or in the house of correction for not more than 2½ years or by a fine not to exceed \$500,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$5,000,000;

(iii) if the value of the money, property or wager cheated and swindled is \$1,000 or more but less than \$10,000, by imprisonment in the state prison for not more than 3 years or in the house of correction for not more than 2½ years or by a fine not to exceed \$100,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$1,000,000;

(iv) if nothing of value was obtained in violation of this subsection or if the value of the money, property or wager cheated and swindled is less than \$1,000, by imprisonment in the house of correction for not more than 2½ years or by a fine not to exceed \$10,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$100,000.

(d) Each episode or transaction of swindling and cheating may be the subject of a separate prosecution and conviction. In the discretion of the commonwealth, multiple episodes or transactions of swindling and cheating committed as part of a single scheme or course of conduct may be treated as a single offense and the amounts involved in acts of swindling and cheating committed according to a

scheme or course of conduct, whether by the same person or several persons, may be aggregated in determining the value of money, property or wager involved in the offense.

(e) A gaming licensee, or an employee of a gaming licensee, who, in a gaming establishment, knowingly:

(i) conducts or operates any game using a cheating and swindling device or game;

(ii) displays for play a cheating and swindling game; or

(iii) permits to be conducted, operated or displayed, any cheating and swindling device or game shall be punished by imprisonment in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 2½ years, or by a fine not to exceed \$25,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$100,000.

SECTION 19. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) Whoever possesses a cheating and swindling device or game, with the intent to defraud, cheat or steal, shall be punished by imprisonment in the house of correction for not more than 2½ years, or by a fine not to exceed \$10,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$100,000.

(b) Possession of a cheating and swindling device or game within a gaming establishment shall constitute prima facie evidence of an intent to defraud, cheat or steal, except possession by a licensee or an employee of a licensee, acting lawfully in furtherance of such person's employment within the gaming establishment, shall be punished by imprisonment in the house of correction for not more than 2½ years, or a fine not to exceed \$10,000, or both.

SECTION 20. Notwithstanding and general or special law rule or regulation to the contrary:-

Whoever manufactures, distributes, sells or services a gaming device, in violation of this chapter or regulations adopted under this chapter and for the purpose of defrauding, cheating or stealing from a

person playing, operating or conducting a game in a gaming establishment, shall be punished by imprisonment in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 2½ years, or by a fine not to exceed \$25,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$150,000.

SECTION 21. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) Any device, game or gaming device possessed, used, manufactured, distributed, sold or serviced in violation of this chapter shall be subject to seizure and forfeiture by the division or bureau. Forfeiture proceedings shall be conducted as provided in subsections (b) to (j), inclusive, of section 47 of chapter 94C. For purposes of subsection (d) of said section 47 of said chapter 94C, the commission shall be considered a police department, entitled to a police department's distribution of forfeiture proceedings.

SECTION 22. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) Whoever, being under 21 years old, plays, places wagers at, or collects winnings from, whether personally or through an agent, a game in a gaming establishment shall be punished by imprisonment in the house of correction for not more than 6 months or a fine not to exceed \$1,000, or both.

(b) Whoever, being a gaming licensee or an employee of a gaming licensee, who knowingly allows a person under the age of 21 to play, place wagers at, or collect winnings from a game in a gaming establishment, whether personally or through an agent, shall be punished, for a first offense, by imprisonment in the house of correction for not more than 1 year or a fine not to exceed \$10,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$500,000 and, for a second or subsequent offense, by imprisonment in the house of correction for not more than 2 years or a fine not to exceed \$50,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$1,000,000.

SECTION 22. Notwithstanding and general or special law rule or regulation to the contrary:-

All penalties collected for pursuant to violations of this act and any renewal fees for a gaming establishment licensed under chapter 23K shall be deposited into the gaming revenue fund established by this act.

SECTION 23. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) The Massachusetts gaming commission shall, by regulation, provide for the establishment of a list of excluded persons who are to be excluded or ejected from a gaming establishment. In determining the list of excluded persons, the board may consider, but shall not be limited to:

(1) whether a person has been convicted of a criminal offense under the laws of any state or the United States that is punishable by more than 6 months in prison, a crime of moral turpitude or a violation of the gaming laws of any state;

(2) whether a person has violated or conspired to violate this chapter relating to:

(i) failure to disclose an interest in a gaming establishment for which the person must obtain a license; or

(ii) willful evasion of fees or taxes;

(3) whether a person has a notorious or unsavory reputation which would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive elements; and

(4) the potential of injurious threat to the interests of the commonwealth in the gaming establishment.

(b) No person shall be placed on the list of excluded persons due to race, color, religion, national origin, ancestry, sexual orientation, disability or sex.

(c) The commission may revoke, limit, condition, suspend or fine a gaming establishment if such establishment knowingly fails to exclude or eject from its premises any person placed by the commission on the list of excluded persons.

(d) Whenever the board places a name on the list of excluded persons, the board shall serve written notice upon that person by personal service, registered or certified mail return receipt requested to the last ascertainable address, or by publication in a daily newspaper of general circulation for 1 week.

(e)(1) Within 30 days of receipt of service by mail or 60 days after the last publication under subsection (d), a person placed on the list of excluded persons may request an adjudicatory hearing before the commission under chapter 30A and show cause as to why the person should be removed from the list of excluded persons. Failure to demand a hearing within the time allotted in this section shall preclude the person from having an administrative hearing, but in no way affect the person's right to petition for judicial review.

(2) Upon receipt of a demand for hearing, the commission shall set a time and place for the hearing. This hearing shall be held not later than 30 days after receipt of the demand for the hearing, unless the time of the hearing is changed by agreement of the commission and the person demanding the hearing.

(3) If, upon completion of the hearing, the commission determines that the person was wrongfully placed on the list of excluded persons, the commission shall remove the person's name from the list of excluded persons and notify all gaming licensees. A person aggrieved by a final decision of the commission in an adjudicatory proceeding under this section may petition for judicial review under section 14 of chapter 30A.

(f) The board shall establish a list of self-excluded persons from gaming establishments. A person may request such person's name to be placed on the list of self-excluded persons by filing a statement with the board acknowledging that the person is a problem gambler and by agreeing that,

during any period of voluntary exclusion, the person may not collect any winnings or recover any losses resulting from any gaming activity at a gaming establishment. The commission shall adopt further regulations, under section 5, for the self-excluded persons list including procedures for placement, removal and transmittal of such list to gaming establishments.

(g) Gaming establishments shall not market to persons on the excluded persons list and shall deny access to complimentaries, check cashing privileges, club programs and other similar benefits to persons on the self-excluded persons list.

(h) Notwithstanding any other law to the contrary, the self-excluded persons list shall not be open to public inspection. Nothing in this section, however, shall prohibit a gaming establishment from disclosing the identity of persons on the self-excluded persons list under this section to affiliated gaming establishments in this commonwealth or other jurisdictions for the limited purpose of assisting in the proper administration of responsible gaming programs operated by affiliated gaming establishments.

SECTION 24. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) A category 1 gaming licensee licensed under chapter 23K shall pay a daily tax of 25 per cent on gross gaming revenues.

(b) A category 2 licensee licensed under chapter 23K shall pay a daily tax of 40 per cent on gross gaming revenue.

(c) In addition to the tax imposed under this act, a category 2 licensee shall pay a daily assessment of 9 per cent of their gross gaming revenue to the Massachusetts race horse development fund established by section 53.

(e) Taxes imposed under this section shall be remitted to the commission by a gaming licensee the day following each day of wagering.

A category 1 licensee or a category 2 licensee shall be subject to chapters 62 through 62E, inclusive, and chapters 63 through 63B, inclusive.

SECTION 25. Notwithstanding and general or special law rule or regulation to the contrary:-

Any liability to the commonwealth under chapter 23K shall constitute a debt to the commonwealth. Once a statement naming a licensee is recorded, registered or filed, any such debt shall constitute a lien on all commercial property owned by a gaming licensee in the commonwealth and shall have priority over an encumbrance recorded, registered or filed with respect to any site.

SECTION 26. Notwithstanding and general or special law rule or regulation to the contrary:-

Prior to disbursement of a prize in excess of \$600 at a licensed gaming establishment, a licensee shall review information furnished by the IV-D agency and by the department of revenue, as set forth in chapter 119A and in this section to ascertain whether the holder of a winning ticket owes past due child support to the commonwealth or to an individual to whom the IV-D agency is providing services, and to ascertain whether the holder of a winning ticket owes any past-due tax liability to the commonwealth. If the holder owes past-due child support or a past-due tax liability, the licensee shall notify the IV-D agency or the commonwealth, respectively, of the holder's name, address and social security number. Subsequent to statutory state and federal tax withholding, the licensee shall first disburse to the IV-D agency the full amount of the prize or such portion of the prize that satisfies the holder's past-due child support obligation and, if funds remain available after that disbursement, the licensee shall disburse to the department of revenue the full amount of the prize or such portion of the prize that satisfies the holder's past-due tax liability. The licensee shall disburse to the holder only that portion of the prize, if any, remaining after the holder's past-due child support obligation and the holder's past-due tax liability have been satisfied.

SECTION 27. Notwithstanding and general or special law rule or regulation to the contrary:-

Gaming licensees shall, on a monthly basis, transmit to the department of transitional assistance and to the IV-D agency, as set forth in chapter 119A, a list of all persons who were the holders of any winning

ticket in excess of \$600.00 in the prior month. The information shall be provided in a format which is compatible with the automated data processing systems of said departments, to ensure the immediate identification of persons who may be receiving public assistance benefits. The information provided shall include the name, address and social security number of the person who was awarded the cash or prize valued in excess of \$600.

SECTION 28. Notwithstanding and general or special law rule or regulation to the contrary:-

Unclaimed prize money shall be retained by the licensee for the person entitled thereto for 1 year after the drawing in which the prize was won. If no claim is made for said money within such year, the prize money shall be deposited in the gaming revenue fund established by section 52.

SECTION 29. Notwithstanding and general or special law rule or regulation to the contrary:-

If the person entitled to a prize or any winning ticket is under the age of 21 years said prize shall be remitted to the commission and deposited into the gaming revenue fund established by section 52.

There is hereby established and placed upon the books of the commonwealth a Gaming Revenue Fund which shall receive revenues collected from the tax on gross gaming revenue received from gaming licensees. The commission shall be the trustee of the fund and shall transfer monies in the fund in accordance with the following provisions:-

(1) one hundred per cent of the revenue received from category 2 licensees shall be transferred to the gaming local aid fund established by section 55.

(2) Upon the opening of a category 1 facility, all monies received into the fund shall be transferred as follows:

(a) One per cent of revenues shall be transferred to the Massachusetts cultural council of which one half of revenues received shall be dedicated to the organization support program of the Massachusetts cultural council and of which not less than one half of revenues shall be dedicated to support not-for-profit or municipally-owned performing arts centers impacted as a result of the licensure of gaming facilities in the commonwealth of Massachusetts. Funds dedicated to such performing arts centers shall be for the purpose of subsidizing fees paid to touring shows or artists; provided, however that funding shall be appropriated through a competitive grant process to be developed and administered by the Massachusetts cultural council.

(b) one half percent shall be transferred to the Massachusetts tourism fund established pursuant to section 35J of chapter 10 which shall fund tourist promotion agencies as defined in subsection (c).

(c) Two per cent shall be transferred to the community mitigation fund established by section 54; provided, however, that said fund balance shall not exceed \$15,000,000. Funds in excess of \$15,000,000 shall be transferred to the local capital projects fund established by section 58;

(d) Three per cent shall be transferred to the local capital projects fund established by section 58;

(e) Thirty per cent shall be transferred to the gaming local aid fund established by section 55;

(f) Fifteen per cent shall be transferred to the commonwealth stabilization fund established by section 2H of chapter 29; provided, however, that in any fiscal year in which the amount appropriated in item 7061-0008 of the general appropriation act, paid from the General Fund, or the amount of unrestricted general government aid paid from the general fund, including lottery aid distribution to cities and towns as paid from the General Fund in accordance with clause (c) of the second paragraph of section 35 of chapter 10 of the General Laws and the amount of additional funds distributed to cities and towns as additional assistance paid from the General Fund, is less than that of the previous fiscal year, up to one-half of the funds otherwise directed to the Commonwealth Stabilization Fund pursuant to this section, up to an amount equal to the deficiency between said appropriations for the current and previous fiscal years, shall be transferred to the gaming local aid fund in addition to the thirty percent provided for in subsection (e);

520 (g) Fifteen per cent shall be transferred to the Education Fund established by section 59.

521 Fifteen per cent shall be transferred to the economic development fund established by section xx.

522 Fifteen per cent shall be used for debt reduction through a program of debt defeasance and accelerated

523 debt payments; provided, that, this program shall be developed jointly by the state treasurer and the

524 secretary of administration and finance and shall be implemented in compliance with state finance law;

525 provided, further, that this program shall prioritize the reduction of risk in the commonwealth's debt

portfolio; provided further, that the state secretary and state treasurer shall provide a written description of the program to the finance advisory board established in section 97 of chapter 6 for the board's review and comment before the program is implemented and shall file a copy of that description with the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets when it is submitted to the finance advisory board;

Five per cent shall be transferred to the gaming mitigation trust fund established under section XX.

Two per cent shall be transferred to the public health trust fund established under section xx.

SECTION 30. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) There is hereby established and placed upon the books of the commonwealth a Race Horse Development Fund to be administered by the commission. The commission shall make distributions from the race horse fund to each of the active and operating category 2 licensees conducting live racing.

(b) Funds from the race horse development fund shall be distributed in proportion to the gross gaming revenue of each category 2 licensee; provided that the funds received by each licensee shall be allocated in accordance with the following provisions:

(i) eighty per cent shall be deposited weekly into a separate, interest-bearing purse account to be established by and for the benefit of the horsemen. The earned interest on the account shall be credited to the purse account. Licensees shall combine these funds with revenues from existing purse agreements to fund purses for live races consistent with those agreements with the advice and consent of the horsemen;

(ii) for a thoroughbred track, 16 per cent shall be deposited on a monthly basis into the Massachusetts thoroughbred breeding program authorized by the commission pursuant to section 2 of chapter 128;

(iii) for a harness track, 8 per cent shall be deposited on a monthly basis into the Massachusetts standardbred breeding program authorized by the commission pursuant to section 2 of chapter 128 and an

additional 8 per cent shall be deposited on a monthly basis into a standardbred breeder development program authorized by the commission;

(iv) four per cent shall be used to fund health and pension benefits for the members of the horsemen's organizations representing the owners and trainers at the racetrack at which the category 2 licensee operates for the benefit of the organization's members, their families, employees and others in accordance with the rule and eligibility requirements of the organization, as approved by the commission. This amount shall be deposited within 5 business days of the end of each month into a separate account to be established by each respective horsemen's organization at a banking institution of its choice. Of this amount, the commission shall determine how much should be paid annually by the horsemen's organization to the thoroughbred jockeys or standardbred drivers organization at the racetrack at which the licensed racing entity operates for health insurance, life insurance or other benefits to active and disabled thoroughbred jockeys or standardbred drivers in accordance with the rules and eligibility requirements of that organization.

SECTION 31. Notwithstanding and general or special law rule or regulation to the contrary:-

Section 54 (a) There shall be established and set up on the books of the commonwealth a separate fund to be known as the Community Mitigation Fund. The community fund shall consist of monies transferred under section **52** and all other monies credited or transferred to the fund from any other fund or source pursuant to law; provided, however, that the balance of the fund shall not exceed \$15,000,000.

(b) The commission shall administer the fund and, without further appropriation, shall expend monies in the fund to assist contiguous communities in offsetting costs related to the construction and operation of a gaming facility including, but not limited to, communities and water and sewer districts in the vicinity of a gaming facility and public safety, including the office of the county district attorney.

(c) Parties requesting appropriations from the community fund shall submit a written request for funding to the commission before February 1 of each year. The commission may hold a public hearing in the region of a gaming facility to provide parties with the opportunity to provide further information about their request for funds and shall distribute funds to requesting parties based on demonstrated need.

SECTION 32. Notwithstanding any general or special law, rule or regulation to the contrary:-

There shall be established and set up on the books of the commonwealth a fund to be known as the Gaming Local Aid Fund. The gaming local aid fund shall consist of monies transferred under section 52 and all monies credited or transferred to the fund from any other fund or source pursuant to law.

Notwithstanding any general or special law, rule or regulation to the contrary, monies from the gaming local aid fund shall be used in addition to the balance of the state lottery fund for distribution to cities and towns in accordance with the provisions of clause (c) of section 35 of chapter 10 and any monies so distributed shall be considered part of "General revenue sharing aid" for purposes of annual aid and contribution requirements established pursuant to chapter 70 or section 3 of the annual general appropriation act. Notwithstanding any law or regulation to the contrary, beginning the first year that Gaming Local Aid funding is available for distribution to cities and towns, no city or town shall receive as a combination of "General Revenue Sharing Aid" and "Gaming Local Aid", in any year, an amount that is less than 25 percent of the total lottery sales made within that community. Notwithstanding any special or general law to the contrary, the provisions of this paragraph shall not take effect until such time as the executive office of administration and finance and the department of revenue has furnished a study of its impact on the state's economy and revenue cost to the commonwealth and its cities and towns, including, but not limited to, a distributional analysis showing the impact on taxpayers of varying income levels, the current practice of other states, any anticipated change in employment and ancillary economic

activity to the joint committee on revenue and until legislation has been filed and passed pursuant to Part 2, Chap. 1, Sec. 1, Art. II of the Constitution.

SECTION 33. Notwithstanding and general or special law rule or regulation to the contrary:-

There is hereby established and set up on the books of the commonwealth a fund to be known as the Education Fund. The education fund shall be credited any monies transferred under section 52 and all monies credited to or transferred to the fund from any other fund or source pursuant to law. Expenditures from said fund for the purposes of K-12 education shall be used to supplement, and not offset, any reduction in line item 7061-0008 of the general appropriations act.

SECTION 34. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) There is hereby established and set up on the books of the board a fund to be known as the Gaming Mitigation Trust Fund. The Gaming Mitigation Trust Fund shall consist of monies transferred from the Gaming Revenue Fund and all other monies credited or transferred to the fund from any other fund or source and proceeds from the investment of such funds. The board shall be the trustee of the fund.

(b) The board shall administer the Gaming Mitigation Trust Fund and shall expend monies in the fund to address the impacts of expanded gaming in the commonwealth as follows:

(1) Two and one half per cent of fund revenues in a fiscal year shall be expended for community mitigation including, but not limited to, the areas of local and regional education, transportation, infrastructure, housing, environmental issues and public safety, including police, fire, and emergency services, in impacted communities, that may include host and surrounding communities;

(2) One and one half per cent of fund revenues in a fiscal year shall be expended for social mitigation including, but not limited to, problem gambling prevention, intervention and treatment services, substance abuse services and gaming-related research;

(3) One and one half per cent of fund revenues in a fiscal year shall be expended for cultural mitigation including, but not limited to, assistance to not-for-profit or municipally-owned performing arts centers

SECTION 35. Notwithstanding and general or special law rule or regulation to the contrary:- Chapter 29 of the General Laws is hereby amended by inserting after section 2AAAA the following 3 sections:

Section 2BBBB. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Local Aid Stabilization Fund. The Local Aid Stabilization Fund shall consist of monies transferred from the Gaming Revenue Fund, established in section 64 of chapter 23K, to the fund, all other monies credited or transferred from any other fund or source and proceeds from the investment of such funds. Subject to appropriation, the fund shall be distributed to cities and towns as a supplement to other sources of local aid distributions, but shall not be subject to section 5C of chapter 29.

Section 2CCCC. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Gaming Economic Development Fund. The fund shall be credited with revenues transferred to it from the Gaming Revenue Fund, established in section 64 of chapter 23K. Amounts credited to the fund shall be expended, subject to appropriation, to support economic development and job growth in the commonwealth including, but not limited to: (1) workforce training, including transfers to the Workforce Competitiveness Trust Fund; (2) tourism promotion, including regional tourism promotion agencies and cultural and recreational attraction promotion; (3) summer jobs; (4) the Massachusetts Marketing Partnership; (5) higher education scholarships; (6) regional economic development initiatives; (7) support for small businesses, including small business lending; (8) green jobs promotion; (9) science, technology, engineering and mathematics career pipeline initiatives; and (10) agricultural development programs, including youth agricultural education.

SECTION 36. Notwithstanding and general or special law rule or regulation to the contrary:-

Section 5A of chapter 62 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word “commonwealth”, in line 24, the following words:- ,including gaming winnings acquired at or through a gaming establishment under chapter 23K.

SECTION 37. Notwithstanding and general or special law rule or regulation to the contrary:-

The seventh paragraph of section 2 of chapter 62B of the General Laws, as so appearing, is hereby amended by striking out the first 2 sentences and inserting in place thereof the following 2 sentences:-

SECTION 38. Notwithstanding and general or special law rule or regulation to the contrary:-

Said chapter 62B is hereby further amended by striking out section 5, as so appearing, and inserting in place thereof the following section:-

Section 5. Every employer required to deduct and withhold from an employee or payee a tax under section 2, or who would have been required under said section in the case of an employee to deduct and withhold a tax if the employee had not claimed any personal exemption or dependency exemptions, shall furnish to each such employee or payee in respect of the wages or other payments paid by such employer to such employee or payee during the calendar year, on or before January 31 of the succeeding year, or, if an employee’s employment is terminated before the close of such calendar year, within 30 days from the day on which the last payment of wages is made, a written statement in duplicate showing the name of the employer, the name of the employee or payee and his social security account number, if any, the total amount of wages or other amounts subject to taxation under chapter 62, and the total amount deducted and withheld as tax. This statement may contain such other information as the commissioner may prescribe. The commissioner may grant reasonable extensions of time, not exceeding 60 days, for the furnishing of the statement.

Every employer who fails to withhold or pay to the commissioner any sums required by this chapter to be withheld or paid shall be personally and individually liable therefore to the commonwealth. The term “employer,” as used in this section and in section 11, includes any person or entity required to withhold

tax from any payee, and includes an officer or employee of a corporation, or a member or employee of a partnership or limited liability company, who as such officer, employee or member is under a duty to withhold and pay over taxes in accordance with this section and section 2. Any sum withheld in accordance with section 2 shall be considered to be held in trust for the commonwealth.

If an employer in violation of the provisions of this chapter fails to withhold the tax in accordance with section 2, and thereafter the tax against which such tax may be credited, pursuant to section 9, is paid, the tax so required to be withheld shall not be collected from the employer; but this paragraph shall in no case relieve the employer from liability for any penalties or addition to the tax otherwise applicable in respect of such failure to withhold.

SECTION 39. Notwithstanding and general or special law rule or regulation to the contrary:-

The first paragraph of section 8 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:-The same basis of reporting shall be utilized for income that is subject to taxation or withholding under chapter 62 or 62B but is not subject to taxation or withholding under the Code.

SECTION 40. Notwithstanding and general or special law rule or regulation to the contrary:-

Subsection (f) of section 38 of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:- “,

For the purposes of this subsection: (1) in the case of the licensing of intangible property, the income-producing activity shall be considered to be performed in the commonwealth to the extent that the intangible property is used in the commonwealth; (2) the corporation shall be considered to be taxable in the state of the purchaser if the tangible personal property is delivered or shipped to a purchaser in a foreign country; (3) sales of tangible personal property to the United States government or any agency or instrumentality thereof for purposes of resale to a foreign government or any agency or instrumentality thereof are not sales made in the commonwealth; (4) in the case of the sale, exchange or other disposition

of a capital asset, as defined in paragraph (m) of section 1 of chapter 62, used in a taxpayer's trade or business, including a deemed sale or exchange of such asset, "sales" are measured by the gain from the transaction; (5) "security" means any interest or instrument commonly treated as a security as well as other instruments which are customarily sold in the open market or on a recognized exchange, including, but not limited to, transferable shares of a beneficial interest in any corporation or other entity, bonds, debentures, notes, and other evidences of indebtedness, accounts receivable and notes receivable, cash and cash equivalents including foreign currencies, and repurchase and futures contracts; (6) in the case of a sale or deemed sale of a business, the term "sales" does not include receipts from the sale of the business "good will" or similar intangible value, including, without limitation, "going concern value" and "workforce in place."; (7) to the extent authorized pursuant to the life sciences tax incentive program established by section 5 of chapter 23I, a certified life sciences company may be deemed a research and development corporation for purposes of exemptions under chapters 64H and 64I; and (8) in the case of a business deriving receipts from operating a gaming establishment or otherwise deriving receipts from conducting a wagering business or activity, income-producing activity shall be considered to be performed in this commonwealth to the extent that the location of wagering transactions or activity that generated the receipts is in this commonwealth.

SECTION 41. Notwithstanding and general or special law rule or regulation to the contrary:-

The General Laws are hereby amended by inserting after chapter 267 the following chapter:-

Chapter 267A

Money Laundering

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

712 “Criminal activity”, a criminal offense punishable under the laws of the commonwealth by
713 imprisonment in a state prison or a criminal offense committed in another jurisdiction punishable under
714 the laws of that jurisdiction as a felony.

715 “Financial institution”, a: (1) bank as defined in section 1 of chapter 167; (2) national banking
716 association, bank, savings and loan, savings bank, cooperative bank, building and loan or credit union
717 organized under the laws of the United States; (3) banking association, bank, savings and loan, savings
718 bank, cooperative bank, building and loan or credit union organized under the laws of any state; (4)
719 agency, agent or branch of a foreign bank; (5) currency dealer or exchange; (6) person or business
720 engaged primarily in the cashing of checks; (7) person or business regularly engaged in the issuing,
721 selling or redeeming of traveler's checks, money orders or similar instruments; (8) broker or dealer in
722 securities or commodities; (9) licensed transmitter of funds or other person or business regularly engaged
723 in the transmission of funds to a foreign nation for others; (10) investment banker or investment
724 company; (11) insurer; (12) dealer in precious metals, stones or jewels; (13) pawnbroker or scrap metal
725 dealer; (14) telegraph or other communications company; (15) personal property or real estate broker;
726 (16) dealer in vehicles including, but not limited to, automobiles, aircraft and vessels; (17) operator of a
727 betting or gaming establishment; (18) travel agent; (19) thrift institution; (20) operator of a credit card
728 system; or (21) loan or finance company.

729 “Monetary instrument”, the currency and coin of the United States or any foreign country; any
730 bank check, money order, stock, investment security, or negotiable instrument in bearer form or otherwise
731 in such form that title passes upon delivery; gold, silver or platinum bullion or coins; diamonds, emeralds,
732 rubies, or sapphires; any negotiable instrument including: bank checks, cashier's checks, traveler's checks,
733 or monetary orders made payable to the order of a named party that have not been endorsed or which bear
734 restrictive endorsements; poker chips, vouchers or other tokens exchangeable for cash by gaming entities;
735 and credit cards, debit cards, gift cards, gift certificates or scrips.

“Transaction”, a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution including, but not limited to, a deposit, withdrawal, bailment, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

Section 2. Whoever knowingly:

(1) transports or possesses a monetary instrument or other property that was derived from criminal activity with the intent to promote, carry on or facilitate criminal activity;

(2) engages in a transaction involving a monetary instrument or other property known to be derived from criminal activity:

(i) with the intent to promote, carry on or facilitate criminal activity; or

(ii) knowing that the transaction is designed in whole or in part either to: (A) conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity; or (B) avoid a transaction reporting requirement of this chapter, of the United States, or of any other state; or

(3) directs, organizes, finances, plans, manages, supervises or controls the transportation of, or transactions in, monetary instruments or other property known to be derived from criminal activity or which a reasonable person would believe to be derived from criminal activity;

shall be guilty of the crime of money laundering and shall be punished by imprisonment in the state prison for not more than 6 years or by a fine of not more than \$250,000 or twice the value of the property transacted, whichever is greater, or by both such imprisonment and fine; and for any subsequent offense shall be punished by imprisonment in the state prison for not less than 2 years, but not more than 8 years

or by a fine of not more than \$500,000 or 3 times the value of the property transacted, whichever is greater, or by both such imprisonment and fine.

Section 3. (a) A financial institution shall file with the attorney general a copy of any and all reports required by the Currency and Foreign Transactions Act, set forth in 31 U.S.C., sections 5311 through 5315, 31 C.F.R. 103.

(b) A financial institution, or any officer, employee, or agent of a financial institution that maintains and files a record or report under this section shall not be liable to its customer, to a state or local agency, or to any person for any loss or damage caused in whole or in part by the making, filing or governmental use of the record or report, or any information contained in the record or report. Nothing in this chapter shall be construed to give rise to a private cause of action for relief or damages. This subsection shall not preclude a financial institution, in its discretion, from instituting contact with, and then communicating with and disclosing customer financial records to appropriate federal, state or local law enforcement agencies if the financial institution has reason to suspect that the records or information demonstrate that the customer has violated this chapter.

(c) Any report, record or information obtained by the attorney general under this section shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66 and shall not be subject to disclosure, except to other state and federal law enforcement agencies.

(d) Any violation of this section, which is not a violation of section 2, shall be punished by a fine of \$100 for each report not filed.

(e) The timely filing of complete and accurate reports required under subsection (a) with the appropriate federal agency shall constitute compliance with the requirements of subsection (a).

Section 4. All monetary instruments or other property, real, intellectual or personal, obtained directly as a result of a violation of section 2 of this chapter, shall be subject to forfeiture to the

commonwealth. Forfeiture proceedings shall be conducted as provided in subsections (b) to (j), inclusive of section 47 of chapter 94C. For purposes of subsection (d) of said section 47 of said chapter 94C, the investigation and enforcement bureau of the gaming control board shall be considered a police department, entitled to a police department's distribution of forfeiture proceedings.

SECTION 42. Notwithstanding and general or special law rule or regulation to the contrary:-

Said chapter 271 is hereby further amended by striking out section 8, as so appearing, and inserting in place thereof the following section:

Section 8. Whoever owns, occupies, or is in control of a house, shop or building and knowingly permits the establishing, managing or drawing of such lottery, or such disposal or attempt to dispose of property, or the sale of a lottery ticket or share of a ticket, or any other writing, certificate, bill, token or other device purporting or intended to entitle the holder, bearer or any other person to a prize or to a share of or interest in a prize to be drawn in a lottery, or in such disposal or property, and whoever knowingly suffers money or other property to be raffled for or won by throwing or using dice or by any other game of chance that is not being conducted in a legalized gaming facility pursuant to chapter 23K, shall be punished by a fine of not more than \$2000 or by imprisonment in a jail or house of correction for not more than 1 year.

SECTION 43. Notwithstanding and general or special law rule or regulation to the contrary:-

The General Laws are hereby amended by inserting after chapter 271 the following new chapter:-

Chapter 271A

Enterprise Crime

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Criminal enterprise activity”, the commission, attempt to commit or conspiracy to commit or the solicitation, coercion, aiding, abetting or intimidation of another to commit any of the following criminal

806 activity under the laws of the commonwealth or equivalent crimes under the laws of any other
807 jurisdiction: a violation of any criminal provision of chapter 23K; a felony offense under chapter 271;
808 distributing, dispensing, manufacturing, or possessing with intent to distribute, dispense or manufacture a
809 controlled substance in violation of chapter 94C; murder; rape; manslaughter, not including motor vehicle
810 homicide; assault; assault and battery; assault and battery in order to collect a loan; assault with intent to
811 rob or murder; poisoning; mayhem; robbery; extortion; stalking; criminal harassment; kidnapping; arson;
812 burglary; malicious destruction of property; commission of a felony for hire; breaking and entering; child
813 exploitation; assault and battery on a child; rape of a child; rape and abuse of a child; enticement of a
814 child under 16; human trafficking; violation of constitutional rights under section 37 of chapter 265;
815 usury; uttering; misuse or fraudulent use of credit cards under section 37C of chapter 266; identity fraud;
816 misappropriation of funds; gross fraud; insurance fraud; unlawful prize fighting or boxing matches;
817 counterfeiting; perjury; subornation of perjury; obstruction of justice; money laundering; witness
818 intimidation; bribery; electronic eavesdropping; prostitution; receiving stolen property; larceny over \$250;
819 larceny by false pretenses or embezzlement; forgery; procurement fraud; false claims; tax evasion; filing
820 false tax returns; or any conduct defined as a racketeering activity under Title 18, U.S.C. s. 1961(1)(A)(B)
821 and (D).

822 “Enterprise”, an entity including any individual, sole proprietorship, partnership, corporation,
823 association, trust or other legal entity and any unchartered union or group of persons associated in fact
824 although not a legally recognized entity.

825 “Gaming establishment”, an establishment licensed under chapter 23K.

826 “Pattern of criminal enterprise activity”, engaging in at least 3 incidents of criminal enterprise
827 activity that have the same or similar pattern, intents, results, accomplices, victims or methods of
828 commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents;

provided, however, that at least 1 of the incidents occurred after the effective date of this chapter, and the last incident occurred within 5 years of another incident of criminal enterprise activity.

“Unlawful debt”, a debt (i) which was incurred or contracted in an illegal gambling activity or business or (ii) which is unenforceable under state or federal law in whole or part as to principal or interest because of the law relating to usury.

Section 2. Whoever knowingly: (1) through a pattern of criminal enterprise activity or through the collection of an unlawful debt acquires or maintains, directly or indirectly, an interest in or control of an enterprise which is engaged in, or the activities of which affect, licensed gaming under chapter 23K or ancillary industries which do business with a gaming establishment; (2) having received proceeds derived, directly or indirectly, from a pattern of criminal enterprise activity or through the collection of an unlawful debt, uses or invests, directly or indirectly, part of the proceeds including proceeds derived from the investment, in the acquisition of an interest in real property to be used in connection with licensed gaming, or in the establishment or operation of, an enterprise which is engaged in, or the activities of which affect, licensed gaming operations or ancillary industries which do business with a gaming establishment; (3) is employed by or associated with an enterprise to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs or activities which affect licensed gaming operations or ancillary industries which do business with a gaming establishment by engaging in a pattern of criminal enterprise activity or through the collection of an unlawful debt; or (4) conspires or attempts to violate subsections (1), (2), or (3) of this section shall be guilty of enterprise crime and shall be punished by imprisonment in the state prison for not more than 15 years or by a fine of not more than \$25,000, or by both such imprisonment and fine.

Nothing in this chapter shall prohibit the purchase of securities on the open market for purposes of investment made without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, if the securities of the issuer held by the (i) purchaser; (ii) members of the

purchaser's immediate family; and (iii) the purchaser's accomplices in any pattern of criminal activity or the collection of an unlawful debt after such purchase do not amount, in the aggregate, to 1 per cent of the outstanding securities of any 1 class and do not confer, either in law or in fact, the power to elect 1 or more directors of the issuer.

Section 3. All monetary proceeds or other property, real, intellectual or personal, obtained directly as a result of a violation of this chapter, shall be subject to seizure and forfeiture to the commonwealth. Forfeiture proceedings shall be conducted as provided in subsections (b) to (j), inclusive of section 47 of chapter 94C. For purposes of subsection (d) of said section 47 of said chapter 94C, the investigation and enforcement bureau of the gaming control board shall be considered a police department, entitled to a police department's distribution of forfeiture proceedings.

SECTION 44. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) There is hereby established and placed upon the books of the commonwealth a Gaming Licensing Fund which shall receive all licensing fees collected from applicants in receipt of a category 1 or category 2 gaming license. The fund shall expire on December 31, 2015. The commission shall be the trustee of the fund and shall transfer monies in the fund in order of the following provisions:-

(1) \$20,000,000 to the community mitigation fund established by section 54;

(2) \$20,000,000 to the Massachusetts gaming commission to be used for start up and operational costs

(3) \$22,500,000 to the local capital projects fund established under section XX.

(4) \$32,000,000 to the manufacturing fund established under section XX.

(5) \$20,000,000 to the community college fund established under section xx.

(6) \$3,000,000 to the tourism fund established under section xx.

(7) \$77,500,000 in the aggregate shall be remitted to the comptroller and the comptroller shall deposit into the Local Aid Stabilization Fund, established by section 2BBBB of chapter 29 of the General Laws;

(8) \$100,000,000 and any additional monies in the fund after disbursement to sections 1 through 6 shall be transferred to the commonwealth stabilization fund established by section 2H of chapter 29;

(b) Upon receipt by the Massachusetts gaming control board of license fees from licensees, interim transfers and payments shall be made on a pro rata basis from the Gaming Licensing Fund as provided in clauses (1) and (2) of subsection (a); provided, however, that no transfer or payment under said clauses (1) and (2) shall occur until the fund reimburses \$20,000,000 to the Stabilization Fund as required by subsection (b) of section 71 of this act.

SECTION 45. Notwithstanding and general or special law rule or regulation to the contrary:-

(a) Within 30 days of the effective date of this act, the comptroller shall transfer \$20,000,000, as a loan with no interest, from the Stabilization Fund established by section 2H of chapter 29 of the General Laws, to the Massachusetts gaming control board for the start-up and operational costs of implementing chapter 23K of the General Laws.

(b) Upon receipt by the Massachusetts gaming control board of sufficient license fees from licensees under said chapter 23K, the board shall remit \$20,000,000 to the comptroller from the Gaming Licensing Fund established in section 62 of said chapter 23K to repay the Stabilization Fund established by said section 2H of said chapter 29.

SECTION 46. Notwithstanding and general or special law rule or regulation to the contrary:-

Not more than \$38,750,000 shall be expended from the Local Aid Stabilization Fund, created in section 2BBBB of chapter 29 of the General Laws, in fiscal year 2012.

SECTION 47. Notwithstanding and general or special law rule or regulation to the contrary:-

There is hereby established and set up on the books of the commonwealth a fund to be known as the Manufacturing Fund. The manufacturing fund shall be credited any monies transferred under section 51 and all monies credited to or transferred to the fund from any other fund or source pursuant to law.

SECTION 48. Notwithstanding and general or special law rule or regulation to the contrary:-

There is hereby established and set up on the books of the commonwealth a fund to be known as the Community College Fund. The community college fund shall be credited any monies transferred under section 51 and all monies credited to or transferred to the fund from any other fund or source pursuant to law.

SECTION 49. Notwithstanding and general or special law rule or regulation to the contrary:-

The Massachusetts gaming commission, hereinafter the commission, with the advice of the gaming policy advisory committee, hereinafter the committee, shall develop an annual research agenda in order to understand the social and economic effects of expanding gaming in the commonwealth and to obtain scientific information about the neuroscience, psychology, sociology, epidemiology and etiology of gambling. The commission may expend funds from the Gaming Mitigation Trust Fund to implement the objectives of the research agenda which shall include, but not be limited to, the following:

(1) a baseline study of the existing occurrence of problem gambling in the commonwealth. The study shall examine and describe the current levels of problem gambling as well as the current programs in the commonwealth that prevent and address the harmful consequences of problem gambling. The commission shall contract with scientists and medical doctors to examine the current research as to the causes for problem gambling and the health effects of problem gambling and the treatment methods currently available in the commonwealth. The commission shall report on the findings of the baseline study and provide recommendations to the house committee on ways and means, the senate committee on ways and means, the joint committee on economic development and emerging technologies, the joint committee on mental health and substance abuse and the joint committee on public health on methods to

923 supplement or improve current problem gambling prevention and treatment services not later than 2 years
924 from the effective date of this act;

925 (2) comprehensive legal and factual studies of the social and economic impacts of gambling in
926 the commonwealth on (a) state, local and Native American tribal governments; and (b) communities and
927 social institutions generally, including individuals, families and businesses within such communities and
928 institutions. The matters to be examined in such studies shall include, but not be limited to: -

929 (i) a review of existing federal, state, local and Native American tribal government
930 policies and practices with respect to the legalization or prohibition of gambling, including a
931 review of the costs of such policies and practices;

932 (ii) an assessment of the relationship between gambling and levels of crime and of
933 existing enforcement and regulatory practices that are intended to address any such relationship;

934 (iii) an assessment of pathological or problem gambling, including its impact on
935 individuals, families, businesses, social institutions and the economy;

936 (iv) an assessment of the impacts of gambling on individuals, families, businesses, social
937 institutions and the economy generally, including the role of advertising in promoting gambling
938 and the impact of gambling on depressed economic areas;

939 (v) an assessment of the extent to which gaming has provided revenues to other state,
940 local, and Native American tribal governments;

941 (vi) an assessment of the costs of added infrastructure, police force, increased
942 unemployment, increased health care and dependency on public assistance; and

943 (vii) the costs of implementing chapter 23K of the General Laws;

944 (3) individual studies conducted by academic institutions in the commonwealth and individual
945 researchers located in the commonwealth to study topics which include, but shall not be limited to: (i)
946 reward and aversion, neuroimaging and neuroscience in humans, addiction phenotype genotype research,
947 gambling-based experimental psychology, and mathematical modeling of reward-based decision-making;

(ii) the sociology and psychology of gambling behavior, gambling technology, and marketing; (iii) the epidemiology and etiology of gambling and problem gambling in the general population. When contracting with researchers to study these issues, the commission shall encourage the collaboration among researchers in the commonwealth and other states and jurisdictions.

The commission and the committee shall annually make scientifically-based recommendations which reflect the results of this research to the house committee on ways and means, the senate committee on ways and means, the joint committee on economic development and emerging technologies, the joint committee on mental health and substance abuse and the joint committee on public health. The commission shall consider any such recommendations, research and findings in all decisions related to enhancing responsible gambling and mitigating problem gambling.

SECTION 50. Notwithstanding and general or special law rule or regulation to the contrary:-

There is hereby established and set up on the books of the commonwealth a fund to be known as the Local Capital Projects Fund. The local capital projects fund shall be credited any monies transferred under sections 51 or 52 and all monies credited to or transferred to the fund from any other fund or source pursuant to law.